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Single Market Emergency Instrument (SMEI)

COM(2022) 459

Summary

The European Commission presented a framework for a new Single Market Emergency Instrument (SMEI) on 19 September 2022. For years now, the Austrian Chamber of Labour (AK) has been drawing attention to the [lack of concepts for tackling crises in the single market](#), so deliberations on how to address crisis situations at the EU level are generally to be welcomed. However, AK **firmly rejects** legal regulations that could lead to a **restriction of the right to strike or of labour and social law provisions**, as can be inferred from the texts on SMEI.

Brief overview

In AK's view, there are a number of key requirements that must be taken into consideration in the legal text when planning an emergency instrument:

- AK firmly emphasises that measures in the single market must under no circumstances be used to curtail or override **labour and social law provisions**.
- The **right to strike** guaranteed in the Charter of Fundamental Rights and the ECHR **must not be challenged under any circumstances**. Linked to this is the demand that Article 2 of the "Strawberry Regulation" (Regulation No 2679/98), which safeguards these fundamental rights, not be removed.
- In principle, we support interventions in the single market to ensure the supply and preservation of jobs and value chains.
- There must be no crisis-related discrimination and/or deterioration of working conditions (in both crisis-relevant and non-crisis-relevant areas) as a result of emergency measures taken.
- Without taking the social dimension into account, none of the current major crises can be tackled. Therefore, there must be a clear commitment to prioritisation of combating social exclusion and to taking the social dimension into account accordingly, for example in the form of a "European Pact for Social Progress".
- In the case of the emergency instrument, which situations are to be classified as a crisis must be clearly defined in advance.
- We support the division of the emergency instrument into the three risk levels of contingency mode, vigilance mode and emergency mode, but the activation of single market vigilance and emergency via implementing acts is to be rejected for democratic reasons.
- The involvement of the social partners in the crisis stages must be ensured at the EU and national level through participation in the advisory group and in the form of consultation.
- In the event of a single market emergency, direct interventions in the market and business decisions are reasonable.
- Consequences of non-compliance are barely addressed in the legal framework and therefore still need to be clearly formulated.

AK's Position

The European Union is facing an unprecedented plethora of crises, many of which are also having a significant impact on the EU's single market. While it was the financial crisis from 2008 onwards that revealed significant weaknesses in the single market philosophy, the Covid-19 pandemic has most recently led to a focus on national action, even overshadowing pan-European security of supply.

New approaches to single market policy

In recent years, numerous crises at the EU level have shown that the single market philosophy pursued so far has several weaknesses and shortcomings. It has become clear that a rethinking of the supply and economy-oriented single market policy pursued to date is necessary, as the following examples show:

The financial crisis from 2008 onward necessitated [public-sector aid](#) measures totaling 1,616 Billion Euro between October 2008 and December 2011 alone (liquidity measures: 1,154 Billion Euro, bank solvency support: 442 Billion Euro). The bailout of the financial sector was followed by strict austerity measures due to mistaken political decisions, leading – unlike in other regions of the world – to a renewed recession and a rise in unemployment. As a result of austerity policies, the sustainability of public budgets in some EU Member States has deteriorated to an even greater extent.

The liberalisation of the EU energy sector, combined with the (partial) privatisation of many energy companies, has led to a corresponding narrowing of the scope for political decision-making. Added to this is legislation that surrenders to market dogmas and now leads to end-users having to pay an electricity price according to the merit order system, which is currently based on the most expensive source of production for electricity, namely gas. AK has repeatedly pointed out that [critical infrastructure such as energy, water or waste disposal belongs in public hands](#). Furthermore, AK calls for an [end to the merit order model](#).

Finally, the Covid pandemic also clearly demonstrated the limits of the liberal single market. The fundamental

freedoms of the single market took a back seat to national actions and were overridden by those. Restrictions on commuters, export bans and border controls were just some of the [negative effects on security of supply in the European Union](#).

In addition, other mistakes made in recent decades are now catching up with the European Union. Instead of focusing on security of supply within the Union, a neoliberal market agenda was pursued. This has led to many companies no longer producing their goods on the EU's single market and instead shifting production to lower-cost third countries. Human rights, working conditions and environmental standards play no role or only a subordinate role in many of the third countries. The Vienna Chamber of Labour addressed this issue in detail in its [Globalisation Compass](#).

Moreover, no consideration was given to the fact that many of the countries to which the production of Western goods was relocated are autocracies and dictatorships. The European Union is now heavily dependent on these countries for many vital goods. This is not just about fossil energy, but also about medicines, solar panels, textiles, electronic products and semiconductors, the lack of which has become highly apparent – beyond Russia's war of aggression against Ukraine – both during the Covid-19 pandemic and in the scope of combating climate change.

We welcome the fact that the European Commission is now trying to counteract this with several individual measures. However, the multitude of crises shows very clearly that there is a need for a fundamental reorientation of the single market guided by Art 3(3) of the Treaty on European Union, including full employment, balanced economic growth and a social market economy, and ensuring security of supply in the EU.

The proposals on the Single Market Emergency Instrument

In principle, AK welcomes measures that take effect in the event of an emergency on the EU single market.

Supply and jobs, as well as **value chains**, must be ensured even in times of crisis.

AK welcomes the fact that the Single Market Emergency Instrument is designed in a manner to complement other EU legal instruments on crisis management for certain sectors or other targeted measures on certain aspects. However, great importance must be attached here to ensuring that there are no duplications or incompatibilities. The question of optimal coordination between the relevant actors is therefore of great importance in the relevant intersecting areas.

Safeguard the right to strike, labour law and social policy regulations

AK wishes to draw attention to the following **fundamental problem of the Commission's proposal** for a regulation establishing a Single Market Emergency Instrument, COM(2022) 459.

The emergency framework provides, inter alia, for the "freezing of restrictions on market freedoms" and the **"mandatory notification by Member States of planned new restrictions"**. The purpose of the latter is evidently to enable quicker and more effective examination of the compatibility of the planned restrictions with market freedoms. Since the concept of restriction is interpreted very broadly against the background of the relevant **CJEU case law**, it covers in principle every regulatory provision and thus **almost the entirety of labour and social law**. Given that in the past labour and social law provisions have repeatedly been judged by the CJEU to be in conflict with market freedoms and have in some cases been overturned, this can be expected to happen to an even greater extent if market freedoms are strengthened.

In particular, the **right to strike** and **provisions of labour and social law** would **quickly come under pressure**. In addition, the "Strawberry Regulation" (on the functioning of the internal market in relation to the free movement of goods among the Member States, Regulation No 2679/89) is repealed without replacement by Article 45 of the draft regulation, COM(2022) 459. Article 2 of this regulation contains a provision stating that it may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in the Member States, including the right or freedom to strike.

AK emphatically calls for the right to strike to be safeguarded. Likewise, **labour and social law provisions** must not be up for negotiation. **Article 2**

of the "Strawberry Regulation" must therefore be included in the draft regulation on the emergency instrument in an unambiguous and adapted manner. To this end, the following provision should be inserted:

"Nothing in this regulation shall be construed to interfere in any way with the exercise of fundamental rights as recognised in the Member States, including the right or freedom to strike. This regulation shall be without prejudice to national labour law and practice, i.e. any statutory or contractual provisions governing terms and conditions of employment, working conditions, including health and safety at work, and labour management relations, including information, consultation and participation."

AK also rejects the "freezing of new restrictions" and the "mandatory notification of new restrictions" here. Furthermore, AK demands that, as in the Services Directive, labour law, social security and social services and the services of temporary employment agencies (Art 1(6), Art 2(2)(e) and (j) of Directive 2006/123/EC on services in the internal market) be excluded from the scope of application.

The focus on crisis-relevant goods and services should also be viewed critically given that it can lead to **shifts in the labour market** and **discrimination against employees** in non-crisis-relevant sectors. The proposal leaves open the question of what precautions will be taken to ensure that working conditions in the Member States do not deteriorate and that the functioning of the labour market is guaranteed. What protection can migrant workers expect under labour law? How will the risk of wage and social dumping be countered? AK demands regulations that provide appropriate protection for employees.

AK calls for the legal acts to also contain a clear **commitment to prioritisation** of the objectives of **combating social exclusion and unemployment**, as well as consideration of the **social dimension**, as is enshrined in primary law and demanded by trade unions, including in the form of a "[European Pact for Social Progress](#)".

General provisions and governance

AK welcomes the classification of the SMEI regulation into **three risk levels** – contingency mode, vigilance mode and emergency mode – because it creates the possibility to plan and implement appropriate precautionary measures. However, with regard to the definitions of terms, Article 3 raises the

question of when a crisis scenario actually comes into play and which goods and services are to be designated as strategically important. The same applies to the question of what is to be designated as a strategically important area. **AK calls for clear definitions and rules here.**

For both the stages of single market vigilance and single market emergency, activation by means of implementing acts of the European Commission is envisaged. **AK is highly critical of implementing acts** from a democratic perspective and calls for the involvement of all three of the EU's legislative EU institutions – the European Commission, the Council and the European Parliament – in order to ensure that the decisions are democratically legitimate.

The **advisory group** proposed in Art 4(5) must be **balanced** in order to be able to produce solutions by mutual agreement. **In AK's view**, the group must therefore **also include the social partners**, with full voting rights. This is necessary, inter alia, because the need for coordination in the Member States and at companies is already triggered at the contingency mode and vigilance mode stages, where it must be ensured that there is a broad consensus on activating the modes.

AK expressly welcomes the fact that Art 5(1) provides for national liaison offices. For all important issues, **AK demands that the national social partners be mandatorily involved.**

Single Market contingency planning

AK welcomes the statement in Art 6(1) that the advisory group must be consulted prior to the Commission's decision to establish **stage 1** of the emergency instrument (**contingency planning**).

If the Commission does not follow the opinion of the Advisory Group, the Commission should be required to justify its dissenting decision in writing to the advisory group. This also applies before the establishment of stage 2 (vigilance mode) by the Commission and level 3 (emergency mode) – even if the Council ultimately decides on activation here.

It is also fundamentally positive that the proposal under Art 6(2b) also calls for **consultation of the social partners** on supply problems in value chains at the Member State level. What is missing, however, is a consultation concerning the effects on the labour market, social aspects and the supply of the population. Article 9(1b) provides that the implementation of **stage**

2 (vigilance mode) must already contain a number of specifications – including, for example, the submission of a list of goods and services of strategic importance and the intended vigilance measures. In order to be ready for situations that require immediate action (where in practice stages 1 and 2 have to be skipped), it would be appropriate in AK's view for lists be prepared already for strategic areas, independently of use of the crisis contingency instrument. Again, it should be noted that this should be performed with the close involvement of the advisory group.

In the **last stage, the Single Market Emergency** (Art 13 et seq.), AK finds the need for intervention in the market and in business decisions – extending to the specification of production requirements or production changeovers for companies – to be reasonable in order to enforce rapid implementation in the event of an emergency. As far as the consequences for non-compliance are concerned, further details still need to be provided.

It should be clarified that the facilitations for companies provided for in Article 26, such as accelerated approvals and authorisations, would also end after the end of the emergency phase and are to be subject to the otherwise envisaged procedure afterwards. Finally, with regard to the first stage of priority rated orders (Article 27), attention should be paid to reasonable and comprehensible prices.



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About Us

The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.